IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1549 OF 1990

Ajit Gopaldas Thakkar ... Plaintiff

Vs.

Smt. Tarabai alias Kumubai

Harishchandra Raut & Ors. ... Respondents

Mr. R.C.Shah i/b. Markand Gandhi &Co. for the Plaintiff.

Ms. Archana Kanekar for Defendants Nos. 15 & 16.

CORAM: S.K.SHAH,J.

DATE : 9th March,2006.

P.C.

1. The Suit is undefended as against Defendants Nos. 1 to 14 & 17.

2. The learned Counsel for the Plaintiff states that in view of the suit filed by the Defendants Nos. 15 and 16 for specific performance of the agreement dated 4.11.1989 executed in their favour by the Defendant Nos.1 to 13, being S.C.Suit No.90340 of 1989 filed in the City Civil Court, Bombay, having been dismissed by order dated 23.2.1994, he does not press prayer clause (b) against Defendants Nos. 15 and 16 which is for declaration that the alleged agreement dated 4.11.1989

is not valid and binding on the Plaintiff and, therefore, withdraws the suit against Defendants Nos. 15 and 16. The suit therefore stands dismissed as withdrawn as against Defendants Nos. 15 and 16.

3. The Plaintiff has filed the affidavit of evidence as also the affidavit of documents. The suit property is described in Exhibit "A" to the plaint. The property is the land bearing Survey No.157, Hissa No.1 admeasuring 3065.9 sq. mtrs. situated at Village Dahisar, Borivali. The description of the property is also given.

4. This property originally belonged to the Defendants Nos. 1 to 13 and one Harishchandra Raut who has expired and, therefore, it is inherited by Defendants Nos. 1 to 13. By an agreement dated 9.5.1985, Defendants Nos. 1 to 13 and Harishchandra Raut had agreed to sell that property to Defendant No.14. That original agreement is produced at item No.2 with the compilation of documents. Under that agreement, the Defendant No.14 had paid the entire consideration to Defendants Nos. 1 to 13 and Harishchandra Raut. Along with that agreement, the Defendant No.13 had executed a power of attorney in favour of the defendant No.14. That power of attorney came to be cancelled and a fresh power of attorney was

executed in favour of the Defendant No.17, a partnership firm of which Kaushik B. Thaker and Manesh R. Kutumtia were the partners authorising them even to sell the property. Subsequent thereto, by an agreement dated 9.10.1986, which is at item No.7 with the compilation of documents, the Defendant No.14 agreed to sell the same property to Defendant No.17 firm. thereafter by agreement dated 23.7.1987 which is item No.13 in the compilation of documents, the Defendant No.17 agreed to sell the suit property to the plaintiff. Under both the agreements, the Defendant No.17 had paid full consideration and under the last agreement dated 23.7.1987, the plaintiff had paid full consideration. Under the first agreement, the Defendant No.14 got possession of the property. Under the second agreement, Defendant No.17 got the property and under the third agreement, the plaintiff got possession of the suit property from the defendant No.17. The suit is for declaration that all these three agreements are valid, binding and subsisting. The plaintiff carried on construction on the suit property and also sold the flats.

5. Under these circumstances, the suit of the Plaintiff is decreed in terms of prayer clauses (a) and (c) with costs as against Defendants Nos. 1 to 14 and 17. Decree be drawn accordingly.

(S.K.SHAH,J.)